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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,766	01/31/2006	Johannis Friso Rendert Blacquiere	FR 030084	6045
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EXAMINER				
PENDLETON, DIONNE				
ART UNIT		PAPER NUMBER		
2627				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/566,766

**Applicant(s)**BLACQUIERE, JOHANNIS FRISO  
RENDERT**Examiner**

DIONNE H. PENDLETON

**Art Unit**

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/31/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Yonezawa (US 2004/0076084)** in view of **Lee (US 2004/0004917)**.

#### **Regarding claims 1 and 6,**

YONEZAWA teaches a device for recording data blocks on a disc-shaped record carrier, and inherently teaches a method for recording at least one data block on a disc-shaped record carrier as suggested by the structure of said device, comprising: a head ("10" in figure 1) for writing at least one data block on said record carrier, means for moving the write head ("12" in figure 1) towards a predetermined track comprising a first location to which the at least one data block is planned to be written, and means for determining a current location of the write head when it is positioned on the predetermined track (lines 5-9 of paragraph [0064]).

YONEZAWA does not clearly teach a *means for controlling*, as recited in the claim.

LEE teaches a "means for controlling" the write head in such a way that the at least one data block is written to a second location ("SA" in figure 2), which is the nearest available location on the track of the current location of the write head in the

rotational sense of the record carrier ("means" implied by disclosure of lines 1-5 of paragraph [0008]).

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Yonezawa and Lee, providing Yonezawa's device with means for managing defects encountered in the optical disc medium, for the purpose of completing the recording of data to said optical disc medium.

**Regarding claims 2 and 7,**

Lee teaches a device and method as claimed in claims 1 and 6, wherein said record carrier includes a user area ("DA (1)" – "DA (n)" in figure 2) for storing the data blocks, a defect management area ("SA (1)" – "SA (n)" in figure 2) for storing data blocks corresponding to defective locations in the user area and a table area ("DT" and "STA" in figure 2, also see paragraph [0007])) for storing a correspondence between logical addresses of data blocks and their location in the defect management area (lines 1-4 of [0011]), said device comprising means for detecting on the record carrier a defective location to which a predetermined data block should have been written (paragraph [0056]), the moving means (see Yonezawa) being adapted to move the write head towards a predetermined track comprising a first location within the defect management area to which the predetermined data block is planned to be written (paragraph [0020] of Lee teaches that the predetermined location in defect management area "SA" may be defective, see also [0013]), said device further

comprising means for updating the table area on the basis of the second location (see paragraph [0058] of Lee).

**Regarding claim 3,**

Lee teaches a method as claimed in claim 2, further comprising a step of modifying the defect management area in such a way that the second location belongs to the defect management area (paragraphs [0013] and [0020] teach that a second location ("SA (n-1)") in the defect management area may be used in the instance where a first location in the defect management area is defective).

**Regarding claims 4 and 8,**

Lee teaches a device and method as claimed in claims 1 and 6, wherein said record carrier includes a file management system (see Figure 4), said device further comprising means for updating the file management system on the basis of the second location (paragraph [0058] teaches update to "status list").

**Regarding claims 5 and 9,**

Lee teaches a device and method as claimed in claims 1 and 6, wherein said record carrier includes a user area ("DA (1) "– "DA (n)" in figure 2) for storing the data blocks and a table area ("DT" in figure 2) for storing a correspondence between logical addresses of data blocks and their location in the user area, said method further comprising a step of updating the table area on the basis of the second location (see paragraph [0058]).

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claim 10** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 10 is drawn to a "program" *per se* or signal with "program", *per se*, or computer readable medium (as defined in the specification on pages 8-9, as being a signal) with "program", *per se*, as recited in the preamble and as such is non-statutory subject matter. See MPEP § 2106.IV.B.1.a. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed tangible computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical "things." They are neither computer components nor statutory processes, as they are

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not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIONNE H. PENDLETON whose telephone number is (571)272-7497. The examiner can normally be reached on 10:30-7:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dionne H Pendleton/  
Examiner, Art Unit 2627

/Wayne R. Young/  
Supervisory Patent Examiner, Art Unit 2627